

AUTHORIZING THE PURCHASE OF CERTAIN INTERESTS IN LANDS
AND MINERAL DEPOSITS BY THE UNITED STATES FROM THE
CHOCTAW AND CHICKASAW NATIONS OF INDIANS

OCTOBER 12, 1943.—Ordered to be printed

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 1372]

The Committee on Indian Affairs, to whom was referred the bill (S. 1372) to authorize the purchase of certain interests in lands and mineral deposits by the United States from the Choctaw and Chickasaw Nations of Indians, having considered the same, report favorably thereon with the recommendations that the bill do pass with the following amendments:

On page 2, line 15, after the word "Interior" and before the word "such", strike the period and insert a colon and insert the following:

And provided further, That before the said rules and regulations are promulgated they must be submitted to and approved by both the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation.

Amend the title to read as follows:

A bill to fulfill a treaty obligation between the United States and the Choctaw and Chickasaw Nations of Indians by authorizing the purchase of certain interests in lands and mineral deposits by the United States from the said Choctaw and Chickasaw Nations of Indians.

To fully identify the said bill (S. 1372) the following statement is made:

During the Seventy-seventh Congress, S. 2534, a bill to authorize the purchase of certain interests in lands and mineral deposits by the United States from the Choctaw and Chickasaw Nations of Indians, was introduced by the junior Senator from Oklahoma [Mr. Lee] and a companion bill (H. R. 6776) was introduced in the House of Representatives by Congressman Cartwright, who represented the Third Oklahoma District.

The said proposed legislation affects the interests of the members of the Choctaw and Chickasaw Tribes of Indians located in the main in the State of Oklahoma but with many members residing in other States and owing to the fact that the two tribes of Indians number approximately 40,000 members, it was by the committee determined impracticable to expect any considerable number of such Indians to

appear before the Senate committee in Washington with respect to the provisions of the said bill; hence, the committee authorized hearings to be held in the State of Oklahoma at the cities of McAlester, Muskogee, Hugo, Durant, Ardmore, and Oklahoma City, and such hearings were held beginning August 31, 1942, and extending through September 5, 1942.

The testimony submitted in such hearings embraces some 217 pages and is available for the consideration of the Members of the Senate.

Owing to the vast number of persons involved, your Committee on Indian Affairs were unable to give due consideration to such testimony and to make a report during the Seventy-seventh Congress, whereupon a new bill, S. 314, was introduced at the beginning of the present Congress.

On July 6, 1943, your committee held hearings on the bill S. 314, which hearings are published and are likewise available to the Members of the Senate.

Your committee, in considering the provisions of the bill and the testimony taken with respect to its provisions, recommended amendments and in order that the amendments might be more readily presented to and understood by the several members of the two tribes it was considered advisable to incorporate such amendments in the original bill S. 314 and then have the bill, with the amendments, reintroduced for the further consideration of the committee.

The bill as amended by the committee was reintroduced and took the number S. 1372.

Your committee therefore report on S. 1372, which is the identical bill in substance as S. 314 and S. 2534, as hereinbefore referred to.

PURPOSE OF BILL

The purpose of the bill is to fulfill a treaty obligation between the United States and the Choctaw and Chickasaw Nations of Indians as provided in the treaty between the said United States and the said Choctaw-Chickasaw Nations of Indians, known as the Atoka agreement, and the supplemental agreements thereafter made and the laws enacted by the Congress.

The treaty obligations are to be fulfilled by authorizing and directing the Secretary of the Interior to enter into a contract on behalf of the United States for the purchase from the Choctaw and Chickasaw Nations of Indians for all the present right, title, and interest of said Indians in the land and mineral deposits reserved from allotment in accordance with the provisions of section 58 of the act entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes of Indians, and for other purposes," approved July 1, 1902. The Secretary shall cause such contract to be executed on behalf of said Indians by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, and shall then submit such contract to said Indians for their approval.

If and when such contract has been approved by said Indians, the Secretary shall submit the contract to the Congress for its ratification; provided that the approval of such contract by the said Indians shall be through a special election called and held pursuant to rules and regulations to be promulgated by the said Secretary of the Interior; and provided further, that before the said rules and regulations are promulgated they must be submitted to and approved by both the principal chief of the Choctaw Nation and the governor of the

Chickasaw Nation. Such contract shall not be binding upon any of the parties thereto until it shall have been ratified by the Congress.

The bill provides that upon the approval of such contract by the Congress—

(a) The amount of the purchase price fixed in such contract when appropriated shall be placed to the credit of the Choctaw and Chickasaw Nations of Indians on the books of the Treasurer of the United States, and thereafter such proceeds shall be distributed to such Indians in pursuance with the terms and provisions of such contract and shall be exempted from attorney fees and other debt contracted prior to the passage and approval of this act; and

(b) The Secretary shall cause a proper conveyance to be executed by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation conveying all right, title, and interest of said Indians in such lands and mineral deposits to the United States, and thereupon all such right, title, and interest shall vest in the United States.

PROCEDURE SUGGESTED IN BILL

Should the said bill be enacted, then the following steps must be taken:

(1) The Secretary of the Interior must confer with the chief of the Choctaw Nation and with the governor of the Chickasaw Nation with respect to the terms of a contract of purchase and sale of the mineral deposits belonging to such nations of Indians.

Before any other action may be taken a definite contract in writing must be made and signed by the said officials—the Secretary of the Interior, representing the United States Government, and the chief of the Choctaw Nation and the governor of the Chickasaw Nation, representing their respective tribes of Indians.

(2) After the contract is made and signed, such contract must be referred to the enrolled members of the two tribes for their consideration in an election to be held under rules and regulations to be made and promulgated by the Secretary of the Interior.

The bill contains a proviso, that “before the said rules and regulations are promulgated they must be submitted to and approved by both the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation”.

(3) If a majority of the enrolled members of the two nations of Indians vote to approve and ratify the said contract, then such contract shall be certified for the consideration of the Congress.

(4) If and when the Congress approves and ratifies the said contract, then it shall become binding upon both the Government and the said two nations of Indians.

(5) After the contract is made and ratified by all parties in interest, funds may be appropriated and expended as per the provisions of the contract and the law enacted in harmony therewith.

Under the program proposed the Congress will be called upon to supervise the proposed purchase of said coal and asphalt deposits by the enactment of at least three separate laws as follows:

(a) The enabling act as proposed in S. 1372;

(b) The approval and ratification of the contract of purchase; and

(c) The appropriation of funds or the authorization of the issuance of bonds for payment to the members of the said two nations of Indians, as may be provided in the said contract.

VALUE OF MINERAL DEPOSITS

In order to make this report as complete as possible, some information as to the value of the mineral deposits should be given.

The record shows that two separate appraisements have been made—one, the "Cameron appraisalment" and the other the "Rutledge appraisalment".

Detailed information respecting these two appraisements may be found on pages 22607 to 22632 of the hearings in Part 40 of the Survey of Conditions of the Indians in the United States.

The first survey was made in 1909 and the value placed upon the workable coal deposits, leased and unleased, was \$12,319,039. No survey was made of asphalt deposits.

The second survey was made by Mr. Rutledge in 1918 and a value was placed on the coal deposits, leased and unleased, in the sum of \$14,461,041.73.

The difference in the two estimates of value was due to the fact that the Cameron appraisal covered only coal which he considered workable and the Rutledge appraisal covered all the coal—considered workable or unworkable.

The asphalt deposits have never been considered of great value and the Rutledge appraisalment estimates the value at less than \$100,000.

ATOKA TREATY, SUPPLEMENTAL TREATIES AND ACTS OF CONGRESS

The various acts of Congress and treaties with the Choctaws and Chickasaws dealing with the tribal coal and asphalt deposits are as follows:

The act of June 28, 1898 (30 Stat. 495).—Section 29 thereof is commonly called the Atoka agreement. This section provided that the coal and asphalt lands shall remain and be the common property of the two tribes. It further provided for the leasing of the coal and asphalt lands, fixing the royalty at 15 cents a ton on coal and 60 cents a ton on asphalt; it further provided that each lease should contain 960 acres, and be for a term of 30 years, each lessee to have the right to use whatever portion of the surface might be necessary for mining operations. No limit was placed on the number of leases a lessee might acquire. Under this act the Secretary of the Interior assumed control of the tribal coal and asphalt as of July 1, 1898, and has continued to exercise such supervision to date.

The act of July 1, 1902 (32 Stat. 641), commonly called the Choctaw-Chickasaw supplemental agreement. It provided for the sale of the coal and asphalt lands and deposits, which had been leased under the Atoka agreement and all other lands principally valuable for their coal or asphalt deposits. Said sale was to be by tracts of 960 acres each, was to be at public auction for cash within 3 years from September 25, 1902, and was to include both the surface and the coal and asphalt deposits, leased and unleased. No limit was placed on the number of tracts a purchaser might acquire. This act did not provide for an appraisalment of the coal deposits.

Act of April 21, 1904 (33 Stat. 189).—Makes appropriations for the Indian Department for the fiscal year of June 30, 1905. This act contained a provision withdrawing the leased coal and asphalt lands and deposits from sale until the further direction of Congress, and authorized the sale upon sealed bids of the unleased coal and asphalt deposits.

Act of April 26, 1906 (34 Stat. 137).—An act providing for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory. Section 13 thereof postpones the sale of both the leased and unleased coal and asphalt lands and deposits until the then existing leases should expire, or until such time as might be otherwise provided by law.

Act of June 21, 1906 (34 Stat. 325).—This act authorized the Secretary of the Interior to appraise the tribal coal deposits and to make practical and exhaustive investigation of the character, extent, and value thereof. It appropriated not exceeding \$50,000 of the tribal funds for that purpose.

Act of February 19, 1912 (37 Stat. 64).—This act authorized the sale at public auction of the surface lands overlying the coal and asphalt deposits leased and unleased, the sale to be by tracts. The act directed the Secretary of the Interior to classify and appraise the lands before offering them for sale, the classification to be into agricultural lands, grazing lands, and town-site property. Each purchaser was limited to 160 acres of agricultural land, 640 acres of grazing land, and 1 acre of town-site land. It also required the Secretary of the Interior to reserve from public sale a sufficient amount of the surface of his coal lease for present and future mining purposes, not to exceed 10 percent of such leased surface, and gave the lessees the right to purchase such surface at the appraised value. Under the act 25 percent of the purchase price was to be paid by the successful bidder at the time of sale, 25 percent additional within 12 months thereafter, and the balance within 2 years from the date of sale. The deferred payments were to bear interest at 5 percent from date of sale.

Act of March 4, 1913 (37 Stat. 1007).—This act gave the Secretary of the Interior authority to add to each then existing lease not to exceed 640 acres of the unleased coal deposits.

Act of February 8, 1918 (40 Stat. 433).—This act authorizes the Secretary of the Interior to sell at public auction the tribal coal and asphalt deposits, leased and unleased, under rules and regulations to be prescribed by him. No purchaser was to be allowed to acquire more than 4 tracts of 960 acres each, except purchasers holding leases approved by the Department. The act further required the Secretary of the Interior to appraise the deposits within 6 months from the date of the passage of the act, and provided that no tract should be sold for less than its appraised value; 20 percent of the purchase price of each tract was to be paid at the time of the sale and the remainder in 4 equal annual payments, the deferred payments bearing interest at 5 percent per annum from date of sale. The act further provided that after the expiration of 1 year after the coal and asphalt deposits had been offered for sale the Secretary of the Interior should again offer such property for sale to the highest bidder at public auction at not less than the appraised value. The act further provided that at the expiration of 6 months thereafter the Secretary might again offer the same property for final sale to the highest bidder at public auction under such terms as he might prescribe and at such valuation, independent of the appraised value, as he may fix.

Act of February 22, 1921 (41 Stat. 1107).—This act authorizes the Secretary of the Interior to reappraise and sell the remainder of the tribal coal and asphalt deposits under rules and regulations to be prescribed by him as to terms and conditions of payment.

AMOUNT OF PROPERTY INVOLVED

Originally there were 445,052 acres within the segregated coal and asphalt area. According to the report of the superintendent of the Five Civilized Tribes Agency for the fiscal year ended June 30, 1938, there are about 379,637.08 acres of the coal and asphalt minerals unsold, valued at \$10,041,029.67.

A suit was filed in the Court of Claims (J-620) by the Choctaw and Chickasaw Nations against the United States claiming more than \$8,000,000 as damages arising out of the delay or failure on the part of the Government to dispose promptly of these coal and asphalt deposits in accordance with earlier agreements with these tribes. The suit has been dismissed for lack of prosecution.

Sections 56 to 63, inclusive, of the act of July 1, 1902, ratifying the supplemental agreement with the Choctaw and Chickasaw Indians (32 Stat. 641), provided that such lands of the Choctaw and Chickasaw Nations as were chiefly valuable for coal and asphalt should be segregated from allotment and sold. Section 59 of the supplemental agreement provided that the lands leased, and unleased, should be sold at public auction for cash within 3 years from the date of final ratification of the agreement and before the dissolution of the tribal government.

LOCATION OF TRIBAL COAL DEPOSITS

The tribal coal deposits are located in six counties of the State—namely, Atoka, Coal, Pittsburg, Latimer, Haskell, and Le Flore. They are under and near the towns and cities of Coalgate, Lehigh, Pittsburg, Savanna, McAlester, Krebs, Blocker, Haileyville, Hartshorne, Adamson, Wilburton, Red Oak, Wister, Howe, Heavener, Coaldale, Poteau, Panama, Rock Island, Bokoshe, Stigler, and McCurtain. In other words, they begin at a point about 1½ miles west of the town of Atoka and extend in a northwesterly direction through the towns of Lehigh and Coalgate, thence in a northeasterly direction a distance of about 140 miles to the Arkansas line, near Coaldale and Rock Island, Okla.

LOCATION OF TRIBAL ASPHALT DEPOSITS

The tribal asphalt deposits are located in three counties of the State. One tract of 960 acres is at the small inland town of Jumbo, about 18 miles northwest of Antlers, in Pushmataha County. Another tract, containing 960 acres is about 4 miles southwest of Sulphur, in Murray County. A third tract, with the same acreage, is about 18 miles northwest of Ardmore in Carter County.

SECRETARY OF THE INTERIOR AUTHORIZED TO RESERVE OIL AND GAS FROM SALE

The provisions of the bill (S. 1372) authorize the Secretary of the Interior to contract to purchase all or any part of the lands and mineral deposits belonging to the said nations of Indians.

Under the present law (Public, No. 374, 75th Cong.) the Secretary of the Interior is authorized to reserve the oil and gas from any sale made by the Government, whenever, in the judgment of the Secretary of the Interior, the best interests of the Indians will be served.

SUPPLEMENTARY AGREEMENT

The second act of Congress dealing with this property was the supplemental agreement, which was also negotiated by representatives of the two tribes and members of the Commission to the Five Civilized Tribes and signed on March 21, 1902. It was confirmed by Congress by the act of July 1, 1902 (32 Stat. 641), and was to become effective when ratified by the Choctaw and Chickasaw people. They ratified it on September 25, 1902, at a special election. It prohibited the further leasing of the coal and asphalt lands and deposits after its ratification. Its coal and asphalt provisions are contained in sections 56 to 63, inclusive, which authorized the Secretary of the Interior to segregate and reserve from allotment all lands in the two Nations principally valuable because of their coal or asphalt deposits, including those leased under the Atoka Agreement, the total segregation not to exceed 500,000 acres. It provided for the sale of the coal and asphalt lands and deposits so segregated, and the payment per capita to members of the two tribes of the proceeds arising from the sale. The leased lands and deposits were to be sold in tracts of 960 acres each; the unleased lands and deposits, in tracts of 640 acres each. The sale was to be a public auction within 3 years from September 25, 1902, and was to include the coal or asphalt deposits, leased and unleased, and the surface lands overlying them. The sale was to be made by a commission of three persons, to be appointed by the President. One was to be a Choctaw by blood, whose appointment should be recommended by the principal chief of the Choctaw Nation, and another a Chickasaw by blood, his appointment to be recommended by the Governor of the Chickasaw Nation. The third member was to be chosen and appointed by the President. No limit was placed on the number of tracts a purchaser might buy. There was no provision for an appraisalment of the property. The Government did not sell any of the property under this agreement.

It has now been over 40 years since the making and ratifying of the supplemental agreement which provided for the sale of the coal and asphalt deposits belonging to the Choctaw and Chickasaw Nations of Indians and during these years the expenses connected with the management and administration of said mineral deposits have equaled, approximately, the revenues derived from both the leasing and sale of parts of such deposits.

Because of the facts herein set forth, the members of the two nations of Indians desire to sell their mineral properties and to have the proceeds distributed as may hereafter be agreed upon in the contract to be made, approved by the Indians and thereafter ratified by the Congress.

In connection with this report the letter of the Secretary of the Interior is printed as follows:

DEPARTMENT OF THE INTERIOR,
Washington, September 9, 1942.

Hon. ELMER THOMAS,
Chairman, Committee on Indian Affairs, United States Senate.

MY DEAR SENATOR THOMAS: Reference is made to your request for a report on S. 2534, a bill "to authorize the purchase of certain interests in lands and mineral deposits by the United States from the Choctaw and Chickasaw Nations of Indians."

I have no objection to the acquisition by the United States of the segregated mineral deposits of the Choctaw and Chickasaw Nations, but I believe certain amendments to S. 2534 are needed.

There is authority under existing law to permit the sale of these coal and asphalt deposits and to lease developed tracts and undeveloped tracts adjoining and needed in connection with mining on developed tracts; but adverse market conditions resulting from the discovery of large quantities of natural gas and oil in Oklahoma and nearby States have rendered it practically impossible in recent years to dispose of the deposits to the advantage of the Indians. It may be many years before the tribes will benefit to any great extent from the sale or leasing of these deposits. In the meantime, the tribes, and the Government as well, must bear the expense of administering and protecting the property and supervising the few sales and leases that may be consummated. For these reasons, it might be advisable for the Government to buy these deposits and hold them in reserve until a better market develops, but provision should be made for their future disposal under conditions similar to those provided in the general leasing act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181, et seq.), and it also should be provided that all proceeds derived therefrom shall be deposited in the general fund of the Treasury of the United States. A memorandum giving further information concerning the segregated coal and asphalt deposits is attached.

Section 1 of the bill authorizes the negotiation of a contract by the Secretary of the Interior for the purchase of the coal and asphalt deposits and the execution of the contract by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation. It then provides that the contract shall be submitted to Congress for approval. No time limit is fixed for approval by Congress, and therefore an executed contract might remain pending before Congress an unlimited time without receiving the necessary approval to make it effective. In order to avoid this it is suggested that the last two sentences of section 1, beginning at line 3, page 2, be stricken and that the following be substituted:

"The contract shall be executed on behalf of the Indians by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation and shall be submitted to Congress. The contract shall become effective upon the expiration of 60 calendar days after the date on which it is transmitted to Congress, but only if during such 60-day period there has not been passed by the two Houses of Congress a concurrent resolution stating in substance that Congress does not favor the contract. If Congress adjourns sine die before the expiration of the 60-day period, a new 60-day period shall begin on the opening day of the next succeeding regular or special session. A similar rule shall be applicable in the case of subsequent adjournments sine die before the expiration of 60 days."

It is recommended that section 2 of the bill be amended to read as follows:

"SEC. 2. Upon such contract becoming effective—

"(a) The amount of the purchase price fixed in the contract shall be placed to the credit of the Choctaw and Chickasaw Nations of Indians on the books of the Treasury of the United States and shall be expended only as may be authorized by Congress.

"(b) The Secretary shall cause a proper conveyance to be executed by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation conveying to the United States all right, title, and interest of said Indians in such lands and mineral deposits as may be covered by the contract and thereupon all right, title, and interest of the Choctaw and Chickasaw Nations shall vest in the United States. The payment provided for herein shall be deemed a full satisfaction of all claims the Choctaw and Chickasaw Nations may have against the United States on account of any withholding from sale, failure to sell, or delay in selling any of the coal and asphalt deposits of said nations."

There should be added to section 3 the following authorization:

"There is also authorized to be appropriated the sum of \$20,000 to be expended under the direction of the Secretary of the Interior, to defray the expenses of negotiating the contract authorized by section 1 hereof, including the making of such appraisal or appraisals as may be deemed necessary."

There should be added to the bill a section to authorize the disposal of any coal and asphalt deposits which may be purchased by the United States. A draft of a section to accomplish this designated section 4 is attached.

The purpose of the changes suggested is obvious and it is believed they would make the bill more practicable and facilitate its administration.

The Bureau of the Budget has advised me "that the enactment of the proposed legislation, either in its present form or if amended as suggested in your proposed report, would not be in accord with the program of the President."

Sincerely yours,

HAROLD L. ICKES,
Secretary of the Interior.